3. Exemptions (§ 54*)—Homestead—Stock of Goods—Demands for Purchase Price.—The provision of Const. 1902, § 190, and Code 1904, § 3630, that the homestead exemption shall not extend to a demand "for the purchase price of the property, or any part thereof," does not prevent allowance to intestate's children of the exemption from a stock of goods, after deducting the value of the part thereof unpaid for.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 76; Dec. Dig. § 54.* 7 Va.-W. Va. Enc. Dig. 91.]

4. Exemptions (§ 54*)—Homestead—Stock of Goods—Claim of Exemption.—The doctrine of confusion of goods does not apply to deprive intestate's children of right to allowance of a homestead out of the proceeds of a stock of goods sold in bulk by the administrator, because the exemption cannot be claimed against the demand for the price of such of them as intestate did not pay for; but the amount of such price is merely to be deducted before allowing the exemption.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 76; Dec. Dig. § 54.* 7 Va.-W. Va. Enc. Dig. 90.]

5. Exemptions (§ 30*)—Homestead—Money Exemption to Minors—Receivers.—The homestead allowance to minors, inuring to their benefit, under Code 1904, § 3635, till they are of age, or marry, after which the creditors are entitled to the principal, consisting of money, should, instead of being paid to the infants' guardian, be administered by the court, through a receiver.

[Ed. Note.—For other cases, see Exemptions, Cent. Dig. § 34; Dec. Dig. § 30.* 7 Va.-W. Va. Enc. Dig. 89.]

Appeal from Circuit Court, Tazewell County.

Controversy between the Edgewood Distilling Company, Incorporated, and the infant children of J. E. Rosser, deceased, as to a homestead exemption. From a decree allowing the exemption and directing the administrator to pay it, said company appeals. Amended and affirmed.

Russell S. Ritz, of Bluefield, W. Va., for appellant.

Sexton & Roberts, of Bluefield, W. Va., for appellees.

GRANT *v.* HARRIS et ux.

Sept. 7, 1914.

[82 S. E. 718.]

1. Witnesses (§ 219*)—Disqualification—Attorneys.—Confidential communications between attorney and client, made because of the

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

relationship and concerning the subject-matter of the attorney's employment, are privileged from disclosure even in the interest of justice, but the rule is for the benefit of the client and may be waived, either expressly or by implication.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 769, 781, 782; Dec. Dig. § 219.* 2 Va.-W. Va. Enc. Dig. 156-158.]

2. Witnesses (§ 219*)—Attorney and Client—Confidential Communications—Privilege.—Where a settlement contract and certain deeds executed by complainant, which she sued to set aside, were alleged to have been procured from her by duress and she denied that certain attorneys, who were instrumental in making the settlement, had been employed by her, but claimed instead that they represented the other side of the transaction, and that they, at the instance of others adversely interested, induced her to execute the deed and settlement agreement without knowledge as to its contents, and while she was incompetent to do so, she thereby waived her right to claim her privilege to prevent the attorneys from testifying.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 769, 781, 782; Dec. Dig. § 219.* Va.-W. Va. Enc. Dig. 156-158.]

3. Deeds (§ 211*)—Cancellation—Capacity—Fraud—Evidence.—In a suit to set aside a settlement, and a deed executed by complainant pursuant thereto, evidence held insufficient to show that the settlement was obtained by fraud or duress, or that complainant was overreached or induced to execute the same without knowledge of its effect.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 637-647; Dec. Dig. § 211.* 11 Va.-W. Va. Enc. Dig. 890.]

4. Deeds (§ 211*)—Validity—Fraud.—Where complainant conveyed land and other property to H. in trust for herself, in order that she might prevent the property being taken under judgment which she expected might be rendered against her, but which trust H. denied, his failure to disclose the same to complainant's attorneys at the time a subsequent settlement was entered into between them, in which complainant executed to H. and wife the deed in controversy, was not such fraud on his part, on the theory that he was under a fiduciary relation to complainant as entitled her to have the settlement and deed set aside.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 637-647; Dec. Dig. § 211.* 11 Va.-W Va. Enc. Dig. 890.]

Appeal from Circuit Court, Washington County.

Action by Elizabeth N. H. Grant against W. J. Harris and wife to set aside certain conveyances and a compromise agree-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

ment. From a decree of dismissal, complainant appeals. Affirmed.

L. P. Summers, of Abingdon, for appellant.

White, Penn & Penn, of Abingdon, and *Powell, Price & Shelton,* of Johnson City, Tenn., for appellees.

WHITTLE *v.* DAVIE.

June 11, 1914. Rehearing Denied Sept. 5, 1914.

[82 S. E. 724.]

Partnership (§ 305*)—Division of Capital and Profits—"Good Will."—D. and W. were partners, D. contributing two-thirds of the capital and W. one-third. W. was to receive an annual salary of $5,000, one-third of the earnings after payment of such salary up to $30,000, and one-half of the earnings in excess of that amount. The partnership plant and business with the good will were sold to a corporation organized to acquire the properties of a number of independent companies, and capitalized so that the average earnings of the constituent companies for the four years preceding its organization would represent approximately 8 per cent. per annum of the capital. The property of the various constituent companies was paid for in preferred stock; the owners being required to buy an equal amount of preferred stock. The balance of the capital stock was common stock, and two-fifths thereof was issued to the owners of the various properties in proportion to the plant value and cash contributed, and the remaining three-fifths in proportion to the earnings of each plant. The earnings of the partnership up to the time of the sale had been divided between the partners under the partnership agreement. Held, that the partnership's share of the three-fifths of the common stock should be divided in proportion to the partners' contribution to the partnership capital, since it did not represent earnings, but earning capacity, and was the price paid for the "good will" of the partnership, which is the advantage or benefit acquired by an establishment beyond the mere value of the capital stock, funds, or property employed therein, in consequences of the general public patronage and encouragement received from constant or habitual customers, on account of its local position, celebrity, reputation for skill, affluence, or punctuality, or other accidental circumstances or necessities, or even from ancient partialities or prejudices (citing 4 Words and Phrases, p. 3128).

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 702-705; Dec. Dig. § 305.* 10 Va.-W. Va. Enc. Dig. 886, 890.

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.